

General Information Letter: A trust that became irrevocable while the grantor was an Illinois resident is itself an Illinois resident subject to tax on its income regardless of geographic source.

January 23, 2008

Dear:

This is in response to your letter dated January 11, 2008, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter you have stated the following:

Last fall I corresponded by email with two individuals at the Illinois Department of Revenue regarding a question on a departed trust. One of those individuals suggested that I write a letter to your department to get a complete answer for my question.

I am inquiring about the nexus for a trust that was created by an Illinois resident, with a legal situs of Illinois at that time. The grantor of the trust moved to STATE several years ago. There are no trust assets in the state of Illinois and no income from any source in Illinois. The beneficiaries are not residents of Illinois. The trustee of the trust is a STATE resident.

My question is do we have an Illinois filing requirement for the trust? With the trust grantor still living, can that grantor legally move the situs of the trust to STATE?

Response

Section 301(a) of the Illinois Income Tax Act (35 ILCS 5/301) provides that all items of income and deduction of a resident are allocated to Illinois. Section 502(a)(2) of the Illinois Income Tax Act (35 ILCS 5/502) requires every resident to file an Illinois income tax return for each taxable year for which a federal income tax return is required. That section also requires the filing of a return by any person who has a tax liability.

Section 1501(a)(20) of the Illinois Income Tax Act (35 ILCS 5/1501) defines "resident" as follows:

The term "resident" means:

(A) an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year;

(B) The estate of a decedent who at his or her death was domiciled in this State;

(C) A trust created by a will of a decedent who at his death was domiciled in this State; and

(D) An irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable. For purpose of this subparagraph, a trust shall be

considered irrevocable to the extent that the grantor is not treated as the owner thereof under Sections 671 through 678 of the Internal Revenue Code.

Accordingly, if the trust became irrevocable while the grantor was a resident of Illinois, the trust is a resident and must allocate all its income to Illinois and file an Illinois return for every taxable year for which it is required to file a federal return. Although there are no Illinois authorities on point, the Connecticut Supreme Court has held that a state may tax the income of a resident trust in circumstances similar to those you describe. See *Chase Manhattan Bank v. Gavin*, 733 A2d 782 (Ct. 1999).

If the trust is not a resident and has no Illinois-sourced income, it would have no liability and would not be required to file an Illinois return. Your letter does not contain facts sufficient for me to offer any opinion regarding the accuracy of your statement that the trust has no income from sources within Illinois.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax